

Decision **PROPOSED DECISION OF ALJ FOGEL (Mailed 4/5/2019)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Liberty Utilities (CalPeco Electric) LLC (U 933-E) for Authority to Among Other Things, Increase Its Authorized Revenues for Electric Service, Update Its Energy Cost Adjustment Clause Billing Factors, Establish Marginal Costs, Allocate Revenues, And Design Rates, as of January 1, 2019.

Application 18-12-001

DECISION AUTHORIZING USE OF A MEMORANDUM ACCOUNT**Summary**

Liberty Utilities (CalPeco Electric) LLC (Liberty) filed this application for a Test Year 2019 General Rate Case (GRC). Liberty seeks an overall increase in rates totaling \$16.4 million or 18.43 percent for the three years from 2019 through 2021, effective January 1, 2019. Because the procedural schedule established for this proceeding does not anticipate a decision before the end of 2019, this decision authorizes Liberty to use the GRC memorandum account authorized in Decision 15-12-035 to track the difference in revenue requirement in effect on December 31, 2018 and the final revenue requirement that the California Public Utilities Commission will authorize to become effective for Liberty's Test Year 2019 GRC in this proceeding.

1. Factual Background

On December 21, 2018, Liberty Utilities (CalPeco Electric) LLC (Liberty) moved for authority to track costs in its general rate case (GRC) memorandum account (GRCMA), established in Decision (D.) 15-12-035.¹ In its motion, Liberty requested authority to track the difference between the revenue requirement in effect as of December 31, 2018, and the revenue requirement that the California Public Utilities Commission (Commission) will authorize to become effective in Liberty's current Test Year 2019 GRC proceeding. Liberty requested authority to make entries to the GRCMA and to accrue interest based on the three-month commercial paper rate as of January 1, 2019. Liberty also requested authority to file a Tier 1 advice letter to update its current GRCMA, attached to its motion as Exhibit A and stated that its request is consistent with longstanding Commission practice, precedents, and policies.

On January 7, 2019, the A-3 Customer Coalition (A-3 CC) responded to Liberty's motion.² On January 17, 2019, Liberty replied to A-3 CC's response to the motion.³ The assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC) on January 25, 2019 and invited party discussion of Liberty's motion. At the PHC, the assigned ALJ requested additional information from

¹ Liberty Utilities (CalPeco), "Motion of Liberty Utilities (CalPeco Electric) LLC (U 933-E) to Track Costs in its General Rate Case Memorandum Account," December 21, 2018.

² A-3 Customer Coalition, "Response of the A-3 Customer Coalition to Liberty Utilities' Motion to Track Costs in its General Rate Case Memorandum Account," January 7, 2019.

³ Liberty Utilities (CalPeco Electric), "Reply to Response of the A-3 Customer Coalition to Motion of Liberty Utilities LLC to Track Costs in its GRCMA," January 17, 2019.

Liberty on its motion, which Liberty filed on February 1, 2019.⁴ Also at the PHC, the assigned ALJ granted parties authority to respond to Liberty's filing, which A-3 CC did on February 11, 2019.⁵ The assigned ALJ also granted Liberty authority to reply to A-3's response, which it did on February 22, 2019.⁶

2. Factual Background

A-3 CC opposed Liberty's motion and recommended several refinements should the Commission ultimately approve it. First, A-3 CC stated that it appeared that Liberty was still collecting for the GRCMA in tariffs, which D.16-12-024 indicated should terminate by December 31, 2018. A-3 CC argued that granting Liberty's motion would amount to rewarding the company for having delayed filing its 2019-2021 GRC, which would "disconnect costs from usage and distort the price signal that should affect customers' behavior." A-3 CC recommended that if the Commission grants Liberty's motion it should order Liberty to make monthly entries to the GRCMA based on the actual recorded sales for that month by customer class, delay initiating the GRCMA for some period of time, and/or deny or delay the recovery by Liberty of any accumulation of interest in the GRCMA. A-3 CC asserted that if the Commission does not take one or more of these steps, Liberty would have little incentive to file the next GRC in a timely fashion.⁷

⁴ Liberty Utilities (CalPeco Electric), "Response to ALJ Request for Information Related to GRCMA," February 1, 2019.

⁵ A-3 Customer Coalition, "Response of the A-3 Customer Coalition to the ALJ's Request for Information about the GRCMA," February 11, 2019.

⁶ Liberty (CalPeco), "Reply of Liberty Utilities to A-3 CC's Response to ALJ Request for Information about the GRCMA," February 22, 2019.

⁷ A-3 CC, *supra* note 2 at 4 – 7.

2.1. GRCMA Tariff

A-3 CC stated that it appeared that Liberty was still collecting the GRCMA costs in tariffs, which D.16-12-024 indicated should terminate by December 31, 2018.⁸ Liberty responded that it stopped collecting the 2016-2018 GRCMA costs on December 31, 2018 and that it had submitted an Advice Letter on January 12, 2019 to revise various tariffs, including the GRCMA.⁹

Liberty stated that the GRCMA balance as of December 31, 2018 was \$1,082,980. Liberty proposed that this remaining balance and any additional costs recorded to the GRCMA in 2019 pursuant to the instant proceeding, be combined and the manner in which the balance of the GRCMA is recovered adopted in the Commission decision on its 2019 Test Year GRC application.¹⁰ In contrast, A-3 CC suggested that collection or disbursement of the final balance in the GRCMA should be taken up after, not in, a Commission decision on Liberty's Test Year 2019 GRC application, "at which point the final balance will be known and available."¹¹

2.1.1. Discussion

Liberty submitted an Advice Letter in early January 2019 to revise its 2016-2018 GRCMA tariff. Therefore, no additional direction from the Commission is required on this point. We concur with Liberty that the correct time for the Commission to address any remaining balance in the GRCMA

⁸ Id.

⁹ Liberty Utilities, *supra* note 4 at 2.

¹⁰ Ibid.

¹¹ A-3 CC, *supra* note 7 at 3.

authorized in the instant decision for Test Year 2019 is the final decision in this proceeding, expected in late 2019.

2.2. Collections and Revenue Allocation by Customer Class and by Actual not Forecast Sales

A-3 CC requested that the Commission order Liberty to make entries to the GRCMA on a customer class basis rather than on a total cost basis. A-3 CC stated that not requiring this would result in some classes bearing more or less than their fair share of the GRCMA balance. A-3 CC also requested that monthly entries to the GRCMA be based on actual recorded sales for that month for each customer class and that the revenue requirement for current and future-authorized rates be determined by multiplying the rate by recorded sales for each customer class; collections or refunds of the balance in the GRCMA should be recorded in the same manner.¹²

Liberty indicated that it was not aware of any case in which the Commission approved tracking costs in a GRCMA by customer class, but that it could track costs in this way if ordered to do so. Liberty also stated it did not know of any case in which a GRCMA revenue collection was based on actual rather than forecast sales, and neither supported nor rejected the approach. Liberty observed that its motion in the instant proceeding was consistent with its request in its 2016-2018 GRC proceeding to track the difference between the then current revenue requirement and the revenue requirement that was ultimately authorized.¹³

¹² A-3 CC, *supra* note 2 at 5.

¹³ Liberty Utilities, *supra* note 4 at 2-3.

A-3 CC responded that the Commission has previously indicated its intent to hold utility shareholders and ratepayers harmless from any delay in the processing of a GRC and has, at least once, authorized a utility to establish a GRCMA that tracks costs from actual rather than forecast sales. A-3 CC asserted that, “tracking through use of actual sales, rather than forecasted sales, helps ensure that ratepayers and shareholders are held harmless during the period of delay.”¹⁴

However, A-3 CC further observed that Liberty’s planned use of its Base Revenue Requirement Balancing Account (BRRBA) would mitigate the risk that actual sales and costs will be lower than forecasted. This was because Liberty would file an advice letter to square up its BRRBA balances if the amount of over- or under-collection is greater than five percent of the total cost requirement, observed A-3 CC. A-3 CC also asserted that if based on actual sales, the GRCMA and the BRRBA become more variable but also better correlate with the rate effects customers would have experienced if rates had taken effect on January 1, 2019.¹⁵

2.2.1. Discussion

A-3 CC asserted that it was important that Liberty track costs in its GRCMA by customer class but provided little information to back up this position. We have not been persuaded that this is a necessary step and therefore will not approve this recommendation.

¹⁴ A-3 CC, *supra* note 5 at 2, citing D.03-12-057 at 11.

¹⁵ *Id.* at 3.

A-3 CC made a similar case that it was important for Liberty to track actual rather than forecast revenues and sales in the GRCMA. In its February 11, 2019 comments, however, A-3 CC conceded that existing BRRBA procedures are sufficient to mitigate any potential harm to customers from use of the GRCMA. We therefore do not approve this second A-3 CC recommendation.

2.3. Delay Initiating GRCMA or Deny Accrual of Interest

A-3 CC recommended that the Commission encourage Liberty to timely file its GRC applications in the future by delaying commencement of the GRCMA for a period of time or by denying accrual of interest. Specifically, A-3 CC recommended a six-month delay in commencement of tracking the cost differences “because Liberty waited six months after the Commission denied its request for an extension.” A-3 CC also observed that the Commission could deny recovery by Liberty of any interest on accumulations in the GRCMA either in whole or in part.¹⁶

A-3 CC added to these points in its February 11, 2019 Response to ALJ Request for Information, in which it stated that, “any decision or ruling granting Liberty CalPeco’s GRCMA cannot, at this point, be made effective on January 1, 2019 as...the Commission has made it clear that a decision authorizing a GRCMA may legally be effective only prospectively from the date of approval; attempts to authorize an earlier date would constitute retroactive ratemaking.”¹⁷

Liberty strongly denied that its motion proposed retroactive ratemaking. Liberty stated that it filed its Motion on December 21, 2018, similar to the

¹⁶ *Id.* at 6.

¹⁷ A-3 CC, *supra* note 5 at 4.

timeline for its 2016-2018 GRC application, and that A-3 CC's protest was the reason for the delay in approval of its motion, not the timing of Liberty's filing. Liberty stated that the Commission has a "clearly established practice of establishing memorandum accounts to allow GRC case decisions delayed past the start of the test year to be effective as if the decisions had not been delayed, notwithstanding the general rule against retroactive ratemaking."¹⁸ Liberty also stated that it experienced "severe resource constraints" in 2018, that it has historically filed its GRC applications well in advance of the targeted final decision date, and that it had not violated any Commission requirement or decision.¹⁹

Liberty observed that the California Public Advocates Office did not oppose its request and that its motion was "consistent with longstanding Commission practices and will not harm ratepayers." Liberty requested that the Commission grant Liberty's motion as filed.²⁰

2.3.1. Discussion

The Commission has regularly authorized its regulated electric utilities to establish memorandum accounts in the context of the prosecution of their respective GRCs. Establishing a GRCMA allows the Commission to adopt a realistic procedural schedule that allows parties sufficient time for review and critical analysis of the record. It is too early to know how the instant proceeding will develop, including whether new issues, discovery disputes, settlements or other factors will impact the schedule. In order to allow sufficient time for Public

¹⁸ Liberty Utilities, *supra* note 6 at 2, citing D.08-12-049 at 3-4.

¹⁹ Liberty Utilities, *supra* note 3 at 3.

²⁰ *Id.* at 3.

Participation Hearings and Evidentiary Hearings, the current procedural schedule does not anticipate that a proposed decision could be issued before the end of the year.

A-3 CC is incorrect that the Commission cannot authorize commencement of tracking of expenses in the GRCMA starting on January 1, 2019. As noted by Liberty, the Commission has a practice of establishing GRCMA's to allow GRC decisions delayed past the start of the test year to be effective as if the decisions had not been delayed.²¹ In addition, Liberty is correct that it did not violate any Commission decision or requirement by filing its 2019 Test Year GRC application in December 2018.²²

For these reasons and because the procedural schedule does not anticipate a decision before the end of 2019, we authorize Liberty to establish a memorandum account to record the difference between the revenue requirement in effect on December 31, 2018 and the revenue requirement it proposes to be adopted in this proceeding for test year 2019. Establishing the memorandum account does not ensure recovery of the amounts recorded in the account, or any portion of the amounts.

A-3 CC has not persuaded us that authorizing Liberty to accrue interest at the three-month commercial paper rate beginning as of January 1, 2019 will cause harm to customers. As observed by Liberty, approval of accrual of interest at

²¹ Public Utilities Code Section 1731(a) states that the Commission "may set the effective date of an order or decision prior to the date of issuance." See also D.18-06-029 at 9-11; D.08-12-049 at 3; D.18-11-051 at 8; and D.19-01-019 at 2-5.

²² D.07-07-004 regarding utilities' Rate Case Plan schedules does not set a specific timeline for filing applications.

this rate is consistent with action we have taken previously for other energy utilities.

Liberty utilities is authorized to establish a GRC Memorandum Account to be effective January 1, 2019, and to file a Tier-1 Advice Letter to include the GRC Memorandum Account tariff in the form set forth in Exhibit A in its December 21, 2018 Motion. The manner in which Liberty shall recover in rates the balance to be booked to the GRC Memorandum Account shall be determined in the GRC decision resulting from A.18-12-001.

3. Comments on Proposed Decision

The proposed decision of ALJ Fogel in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on April 25, 2019 by A-3 Customer Coalition and reply comments were filed on April 30, 2019 by Liberty. Minor changes to improve clarity were made to the final decision.

4. Assignment of Proceeding

Commissioner Martha Guzman Aceves is the assigned Commissioner and Cathleen A. Fogel is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Commission can authorize commencement of tracking of expenses in the GRCMA starting on January 1, 2019.
2. The Commission has regularly authorized its regulated electric utilities to establish memorandum accounts in the context of the prosecution of their respective GRCs.
3. The procedural schedule established for this proceeding does not anticipate that a proposed decision will be issued before the end of 2019.

4. Liberty's request to accrue interest within the GRCMA at the three-year commercial paper rate is consistent with action this Commission has taken previously for other energy utilities.

Conclusions of Law

1. It is reasonable to use the GRCMA established in D.15-12-035 as described in this decision to process this matter without harm to any party due to the timing of the final decision.

2. The correct time to address any remaining balance in the GRCMA authorized in this decision for Test Year 2019 is the final decision in this proceeding.

3. Use of the GRCMA to track expenses does not, by itself, ensure the recovery of any specific amount.

O R D E R**IT IS ORDERED** that:

1. The December 21, 2018 Motion of Liberty Utilities (CalPeco Electric) LLC for Authority to Track Costs in its General Rate Case Memorandum Account is granted.

2. Liberty Utilities (CalPeco Electric) LLC shall use the general rate case memorandum account authorized in Decision 15-12-035 to track the difference in revenue requirement in effect on December 31, 2018 and the revenue requirement it proposed in Application 18-12-001 be adopted for Test Year 2019.

3. Liberty Utilities (CalPeco Electric) LLC shall file a Tier-1 Advice Letter within 30 days of issuance of this decision, to take effect on January 1, 2019, to track the difference between the revenue requirement effective as of

December 31, 2018, and the final revenue requirement authorized in this proceeding.

4. Liberty Utilities (CalPeco Electric) LLC is authorized to accrue interest based on the three-month commercial paper rate beginning January 1, 2019.

5. The tracking of revenues in this memorandum account does not predetermine that recovery of the amounts included in the memorandum account is reasonable or recoverable from ratepayers.

6. Application 18-12-001 remains open.

This order is effective today.

Dated _____, at Oxnard, California.